VOTE YES ON HOUSE BILL 4686

Sponsored by the honorable state Representative Harvey Santana, House Bill 4686 seeks to give *all* municipalities the same right to assert an *"open and obvious"* defense in sidewalk trip-and-fall lawsuits that the private sector has employed for years to sentinel its premises.

Circumstances in the City of Detroit augment the logic behind this common-sense legislation. Consider the following:

- Detroit – by far Michigan's largest city, comprising 143 square miles – has roughly 4,500 miles of sidewalk to maintain. For perspective, that is tantamount to driving *roundtrip*, Detroit to Los Angeles.

- Evidenced by its historic bankruptcy filing, Detroit does not now have the money to repair all its sidewalks. It is unlikely to have resources for such in the future, in light of limited growth in its funding streams, including state revenue sharing, and its extraordinary funding needs for essential city services.

- Detroit defends itself against numerous sidewalk trip-and-fall lawsuits each year – many of them dubious. For the last fiscal year (2013) for which complete data are available, the city paid almost $6 million in sidewalk lawsuit settlements. That was roughly 25 percent of all lawsuit payouts, with other major categories being motor-vehicle accidents (45 percent) and police cases (27 percent).

- Detroit is not a member of the Michigan Municipal Risk Management Association – a self-insurance pool of municipalities – because of its extraordinary exposure to litigation. Additionally, it is cost-prohibitive for the city to buy private insurance.

  Thus, the aforementioned money comes right out of the city's general fund – resources that are desperately needed to enhance police, fire and other essential municipal services for residents, businesses and visitors.

- House Bill 4686 would not prevent an individual from suing any municipality for a sidewalk defect, but, rather, seeks to permit municipalities to use an *"open and obvious"* defense against such grievances.

- Courts have permitted private enterprise to employ an *"open and obvious"* defense for years, such that today it is routinely considered their "first-line" of protection in said cases. Specifically, while the private sector has a common law duty to make its premises reasonably safe for invitees, it is protected from liability if an invitee injures him/herself in a dangerous condition that is an *"open and obvious"* one.

  So, for example, if an individual trips on a conspicuous defect in a grocery parking lot, the store can assert the defense of *"open and obvious."* … Simply put, the *"open and obvious"* nature of the danger serves as warning to the invitee to protect him/herself against it.

- Municipalities, on the other hand, have a statutory law obligation to maintain their sidewalks and currently cannot use said common law defense – thus, the rationale for House Bill 4686, which endeavors to insert common-sense into statute.

  Simply put, everyone is responsible to watch where they are going!

- House Bill 4686 is an extension of previous legislative efforts to manage sidewalk trip-and-fall lawsuits. Most notably, the Legislature three years ago passed House Bill 4589 – now ***Public Act 50 of 2012*** – to affirm that municipalities are *"presumed to have maintained the sidewalk in reasonable repair"* if any unevenness in the walkway is less than 2 inches.

- Again …

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